

## CIVIL COVER SHEET

5:19-cv-6001

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM)

## I. (a) PLAINTIFFS

MICHAEL DENIGHT

(b) County of Residence of First Listed Plaintiff Gloucester, NJ  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Daniel T. Silverman, Costello & Mains, LLC, 18000 Horizon Way, Suite 800, Mount Laurel, NJ 08054, 856-727-9700

## DEFENDANTS

MILLER'S SMORGASBORD

County of Residence of First Listed Defendant LANCASTER, PA  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

Attorneys (If Known)

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for Nature of Suit Code Descriptions

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care - Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input checked="" type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

## V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity)  
42 USC 12101, ET SEQ.

Brief description of cause  
DISABILITY DISCRIMINATION IN PUBLIC ACCOMMODATION

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint

JURY DEMAND: ☒ Yes ☐ No

## VIII. RELATED CASE(S) IF ANY

(See instructions)

JUDGE

DOCKET NUMBER

DEC 16 2019

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG JUDGE

JDW

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

19

6001

## DESIGNATION FORM

(to be used by counsel or pro se plaintiff to indicate the category of the case for the purpose of assignment to the appropriate calendar)

Address of Plaintiff: 49 Orion Way, Sewell, NJ 08080

Address of Defendant: 2811 Lincoln Highway East, Ronks, PA 17572

Place of Accident, Incident or Transaction: 2811 Lincoln Highway East, Ronks, PA 17572

## RELATED CASE, IF ANY:

Case Number: \_\_\_\_\_ Judge: Ala Date Terminated: \_\_\_\_\_

Civil cases are deemed related when Yes is answered to any of the following questions:

- |  |                              |  |
|--|------------------------------|--|
| 1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?  | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?            | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action of this court? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?  | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |

I certify that, to my knowledge, the within case ☐ is / ☒ is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE 12/18/2019

[Signature]  
Must sign here  
Attorney-at-Law / Pro Se Plaintiff

208348

Attorney I D # (if applicable)

## CIVIL: (Place a ✓ in one category only)

## A. Federal Question Cases:

- ☐ 1. Indemnity Contract, Marine Contract, and All Other Contracts
- ☐ 2. FELA
- ☐ 3. Jones Act-Personal Injury
- ☐ 4. Antitrust
- ☐ 5. Patent
- ☐ 6. Labor-Management Relations
- ☒ 7. Civil Rights
- ☐ 8. Habeas Corpus
- ☐ 9. Securities Act(s) Cases
- ☐ 10. Social Security Review Cases
- ☐ 11. All other Federal Question Cases  
(Please specify) \_\_\_\_\_

## B. Diversity Jurisdiction Cases:

- ☐ 1. Insurance Contract and Other Contracts
- ☐ 2. Airplane Personal Injury
- ☐ 3. Assault, Defamation
- ☐ 4. Marine Personal Injury
- ☐ 5. Motor Vehicle Personal Injury
- ☐ 6. Other Personal Injury (Please specify) \_\_\_\_\_
- ☐ 7. Products Liability
- ☐ 8. Products Liability - Asbestos
- ☐ 9. All other Diversity Cases  
(Please specify) \_\_\_\_\_

## ARBITRATION CERTIFICATION

(The effect of this certification is to remove the case from eligibility for arbitration.)

I, Daniel T. Silverman, counsel of record or pro se plaintiff, do hereby certify

☒ Pursuant to Local Civil Rule 53.2, § 3(c) (2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs:

☐ Relief other than monetary damages is sought

DATE 12/18/2019

[Signature]  
Sign here if applicable  
Attorney-at-Law / Pro Se Plaintiff

208348

Attorney I D # (if applicable)

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38

DEC 16 2019

JDW

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIACASE MANAGEMENT TRACK DESIGNATION FORM

MICHAEL DENIGHT :  
v. :  
MILLER'S SMORGASBORD :  
CIVIL ACTION  
NO. 19 6001

AIR

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

**SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:**

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ( )
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ( )
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ( )
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ( )
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ( )
- (f) Standard Management – Cases that do not fall into any one of the other tracks. ( )

12/4/19  
Date[Signature]  
Attorney-at-lawPlaintiff Denight  
Attorney for

856-727-9700

Telephone

856-727-9797

FAX Number

dsilverman@costellomorris.com

E-Mail Address

DEC 16 2019

JDW

By: Daniel T. Silverman, Esquire  
18000 Horizon Way, Suite 800  
Mount Laurel, NJ 08054  
(856) 727-9700  
Attorneys for Plaintiff

## MICHAEL DENIGHT

Plaintiff,

**VS.**

MILLER'S SMORGASBORD; AND JOHN  
DOES 1-5 AND 6-10

Defendants.

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CIVIL ACTION

19 6001

DOCKET NO:

## COMPLAINT AND JURY DEMAND

### Preliminary Statement

### **Jurisdiction and Venue**

3 Jurisdiction lies over the State law claims based on the principles of supplemental  
jurisdiction as codified at 28 U.S.C. Sec.1367.

4. All claims herein arose within the jurisdiction of the United States District Court for the Eastern District of Pennsylvania and involve a defendant who resides within the jurisdictional limits.

5. Venue has accordingly been invoked pursuant to the dictates of 28 U.S.C. Sec.1391 (b)(c).

6. Plaintiff exhausted his administrative remedies pursuant to the ADA and PHR claims in that he filed a claim with the Equal Employment Opportunity Commission (“EEOC”) which was cross filed with the Pennsylvania Human Relations Commission (“PHRC”).

7. On October 22, 2019, plaintiff was issued a Right to Sue Letter.

#### **Identification of Parties**

8. Plaintiff Michael DeNight is a resident of the State of New Jersey.

9. Defendant Miller’s Smorgasbord operates a restaurant open to the public at 2811 Lincoln Highway East, Ronks, Pennsylvania.

10. Defendants John Does 1-5 and 6-10, currently unidentified, are individuals and/or entities who, on the basis of their direct acts or on the basis of *respondeat superior*, are answerable to the plaintiff in this matter.

#### **General Allegations**

11. Plaintiff is a disabled veteran who has been diagnosed with post-traumatic stress disorder (“PTSD”).

12. Plaintiff is disabled within the meaning of the that term under the ADA and the PHRA.

13. In connection with his PTSD, plaintiff utilizes a trained service dog.



14. On or about June 26, 2019, plaintiff and his family attempted to visit defendant's restaurant.

15. Defendant operates a place of public accommodation.

16. On that date, plaintiff was accompanied by his service dog.

17. Upon arrival, defendant's hostess immediately stated that the restaurant did not allow "support" animals in the building.

18. Plaintiff explained that his dog was not a support animal, but rather a service animal meant to aid with his disability.

19. The hostess left and then returned with defendant's manager, Jonathan Smith.

20. Plaintiff specifically explained to Mr. Smith the difference between a service dog and a support dog.

21. Plaintiff offered to display evidence of the dog's training and registration, but Mr. Smith refused.

22. Instead, Mr. Smith insisted on plaintiff stating his exact medical condition.

23. Plaintiff explained that he was a disabled veteran and that the dog aided with his condition.

24. Plaintiff further stated that he found Mr. Smith's questions invasive of his medical privacy.

25. Mr. Smith responded that it was "company policy" to not let the dog enter and unless plaintiff would disclose his exact medical condition, he would be denied entry.

26. Mr. Smith further stated that if plaintiff did not leave, the defendant would call the police.

27. Plaintiff again attempted to explain, by law, that he was permitted entry with his dog and further stated that Mr. Smith's actions were embarrassing him in front of his young children.

28. Plaintiff again offered to show the dogs registration card, but Mr. Smith refused to review the same.

29. Another manager, Chase Keidal came forward, but he also refused to review the dog's registration card.

30. Shortly thereafter, two police officers arrived and based upon request from the defendant, removed plaintiff from the restaurant.

31. Once outside, the officer stated to plaintiff that he was within his rights to have this service dog at the restaurant, but that there was nothing further they could do at the time.

32. Defendant denied plaintiff the privileges of a public accommodation because of disability.

33. Defendant denied plaintiff entry to a place of public accommodation and denied him full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of that public accommodation.

34. Defendant denied plaintiff the opportunity to participate in or benefit from the goods, services, facilities, privileges, advantages, and accommodations of a place public accommodation.

35. Defendant failed to make reasonable modifications in its policies, practices and procedures, when such modification was necessary to afford defendant's goods, services, facilities, privileges, advantages, and accommodations to an individual with a disability.

36. Defendant failed or refused to modify policies, practices and procedures to permit the use of a service animal by an individual with a disability.

37. As a result of defendant's conduct, plaintiff has experienced humiliation, mental anguish, and upset.

38. The discrimination in this matter is so egregious as to warrant the imposition of punitive damages against the defendant.

## **COUNT I**

### **Disability Discrimination Under the ADA**

39. Plaintiff hereby repeats and realleges paragraphs 1 through 38 as though fully set forth herein.

40. Defendant subjected plaintiff to disability discrimination for which it is liable under the ADA.

**WHEREFORE**, plaintiff demands judgment against the defendants, jointly, severally and in the alternative, together with: respectfully requests that this Court enter a judgment;

- (a) compensatory damages
- (b) non-economic compensatory damages, including emotional pain and suffering,
- (c) interest
- (d) cost of suit
- (e) attorney's fees
- (f) enhanced attorney's fees
- (g) an equitable order requiring defendant to adopt and implement a policy of non-discrimination against persons with disabilities, including persons who use service animals,



and to make reasonable accommodation to policies, practices, and procedures to ensure that goods, services, facilities, privileges, advantages and accommodations are afforded to individuals with disabilities.

(e) an equitable order requiring defendant to design and implement appropriate staff training programs to ensure that all personnel affiliated with defendant who have contact with members of the public (whether employees or independent contractors) are knowledgeable about the policies related to the provision of goods and services to persons with disabilities.

(f) such other orders as the court deems equitable and just.

## COUNT II

### **Disability Discrimination Under the PHRA**

41. Plaintiff hereby repeats and realleges paragraphs 1 through 40 as though fully set forth herein.

42. Defendant subjected plaintiff to disability discrimination for which it is liable to plaintiff under the PHRA.

**WHEREFORE**, plaintiff demands judgment against the defendants, jointly, severally and in the alternative, together with: respectfully requests that this Court enter a judgment;

- (a) compensatory damages
- (b) non-economic compensatory damages, including emotional pain and suffering,
- (c) punitive damages
- (d) interest
- (e) cost of suit

- (f) attorney's fees
- (g) enhanced attorney's fees
- (h) an equitable order requiring defendant to adopt and implement a policy of non-discrimination against persons with disabilities, including persons who use service animals, and to make reasonable accommodation to policies, practices, and procedures to ensure that goods, services, facilities, privileges, advantages and accommodations are afforded to individuals with disabilities.
- (i) an equitable order requiring defendant to design and implement appropriate staff training programs to ensure that all personnel affiliated with defendant who have contact with members of the public (whether employees or independent contractors) are knowledgeable about the policies related to the provision of goods and services to persons with disabilities.
- (j) such other orders as the court deems equitable and just.

Respectfully submitted,

**COSTELLO & MAINS, LLC**

By: 

Daniel T. Silverman  
18000 Horizon Way, Suite 800  
Mt. Laurel, New Jersey 08054  
856-727-9700  
dmains@costellomains.com  
Attorney for Plaintiff

Dated: December 4, 2019

**DEMAND FOR A TRIAL BY JURY**

Plaintiff, by and through his undersigned counsel, hereby demands, pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, a trial by jury on all Counts in the above-captioned action.


**COSTELLO & MAINS, LLC**

By:   
Daniel T. Silverman

**DESIGNATION OF TRIAL COUNSEL**

Daniel T. Silverman, Esquire, of the law firm of Costello & Mains, LLC, is hereby-designated trial counsel.

**COSTELLO & MAINS, LLC**

By:   
Daniel T. Silverman

**DEMAND TO PRESERVE EVIDENCE**

1. All defendants are hereby directed and demanded to preserve all physical and electronic information pertaining in any way to plaintiff's employment, to plaintiff's cause of action and/or prayers for relief, to any defenses to same, and pertaining to any party, including, but not limited to, electronic data storage, closed circuit TV footages, digital images, computer images, cache memory, searchable data, emails, spread sheets, employment files, memos, text messages and any and all online social or work related websites, entries on social networking sites (including, but not limited to, Facebook, twitter, MySpace, etc.), and any other information and/or data and/or things and/or documents which may be relevant to any claim or defense in this litigation.

2. Failure to do so will result in separate claims for spoliation of evidence and/or for appropriate adverse inferences.

**COSTELLO & MAINS, LLC**

By:   
Daniel T. Silverman